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February 15, 2008

**VIA EFS**

Marlene H. Dortch

Secretary

Federal Communications Commission

TW-A325

445 - 12th Street, SW

Washington, DC 20554

Re: Notice of Ex Parte Presentation – MC Docket 07-135

Dear Ms. Dortch:

On February 14, 2008, Ronald Laudner, CEO of Omnitel Communications, Josh Nelson, CEO of Great Lakes Communications, and their counsel, Thomas Cohen and Edward A. Yorkgitis Jr., Kelley Drye & Warren LLP, met with Albert Lewis, Deena Shetler, Doug Slotten, Jay Atkinson, Marcus Maher, Randy Clarke, and Victoria Goldberg of the Wireline Competition Bureau to discuss the issues raised in the Notice of Proposed Rulemaking in the above-captioned docket. The representatives of Omnitel and Great Lakes provided an update on related developments in the past eight months, including the pending court cases and status of carrier negotiations, which strongly indicate the availability of marker-based resolution of remaining issues, and urged the Commission to exercise caution in considering any new regulations. Omnitel and Great Lakes also reviewed positions taken in the comments and reply comments in which it participated. The attached written presentation was used in the meeting.

I request that this letter, which is being filed electronically, be placed in the file for the above-captioned proceeding.

February 15, 2008  
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Please contact the undersigned if there are any questions.

Very truly yours,



Edward A. Yorkgitis Jr.  
*Counsel for Omnitel Communications  
and Great Lakes Communications*

cc: A. Lewis  
D. Shetler  
D. Slotten  
J. Atkinson  
M. Maher  
R. Clarke  
V. Goldberg

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**RESPONSE TO ALLEGED  
TRAFFIC STIMULATION:  
A MARKET-BASED COUNTERPROPOSAL  
FROM RURAL CLECS**

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Ex Parte Presentation by  
Great Lakes Communications &  
OmniTel Communications  
WC Docket No. 07-135  
February 14, 2008

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# REVIEW OF LITIGATION AND FCC ACTIONS ADDRESSING TRAFFIC STIMULATION DISPUTES

- LECs Accuse IXCs of Call Blocking/Degradation
- IXCs Initiate “Tariff Violation” Litigation
- LECs File Collection Actions
- FCC Issues Declaratory Ruling on Blocking/Degradation
- FCC Issues Order to Suspend/Investigate ILEC 2007 Access Tariffs
- FCC Issues Ruling in Qwest v. Farmers
- FCC Initiates Traffic Stimulation NPRM
- LECs & AT&T Settle Litigation
- FCC Issues Partial Reconsideration in Qwest v. Farmers

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# **KEY FACTS UNDERLYING TRAFFIC STIMULATION DEBATE**

- **The Different Types (Nature) of Traffic Under Review are Virtually Impossible to Distinguish**
- **Non-Rural ILEC Costs are a Poor Measure for Rural CLEC Costs**
- **IXC Continue to Engage in Self-Help Rather than Pursue Market-Based Solutions**

# **BACKGROUND ON OMNITEL COMMUNICATIONS**

- Began operations in January, 2000 in six rural markets in Iowa
- Currently serves almost 1800 customers and has 5700 access lines
- Provides network access to IXC's through Iowa Network Services
- Currently serves two conference calling customers
- To accommodate the growth in traffic has had to augment switching capacity several times, including in 2006 the addition of a new switch
- More recently started wireless PCS, Data Management, VoIP, and Wireless Internet access business lines

# BACKGROUND ON GREAT LAKES COMMUNICATIONS

- Began operation as a CLEC in March, 2005 in Lake Park and Milford, Iowa (Total Population – 3700)
- Currently serves 380 customers, 11 of which are conference calling companies
- Provides network access to IXC's through a third-party provider, Iowa Network Services
- To accommodate the growth in traffic, Great Lakes:
  - Added a second Tekelec T7000 switch in July, 2007, to serve a second exchange
  - Added a third switch (Tekelec T9000) as traffic grew
  - \$3.5M of capital expenditures, in addition to augments to collocation space
- Has introduced other business services, including VoIP

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# TRAFFIC GROWTH AND ARTIFICIAL ACCESS ELEMENTS

- Conference Calling Services are Legitimate Businesses
  - Provide a lower cost alternative to IXC-affiliated conferencing services
  - Are used by a wide variety of end users
  - No question that Great Lakes and Omnitel are providing terminating access services
- Where Access Charges include Artificial Elements, FCC Regulatory Involvement may be Appropriate
  - Unnecessary intermediate switching
  - Automated calling to generate minutes
    - Non end-user originated traffic akin to fax dialing
    - Contrast with heavy end user minutes initiated by numerous callers
  - Unjustified Transport
    - Multiple calls strung together as described in comments
    - Contrast with CLECs that seek to minimize switching costs by serving a large area with one switch
    - Contrast with transport associated with statewide network for use by rural carriers to enable equal access



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## **COMMISSION'S FOCUS: REASONABLENESS OF ACCESS RATES**

- The Issue is not the Nature of the Traffic, but the Reasonableness of Access Rates
  - Both Great Lakes and Omnitel have tariff rates in accordance with current FCC rules for rural CLECs
  - FCC has avoided cost regulation of CLECs to date
  - Any FCC action must be prospective only and should be limited to where market solutions are unavailable

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# **IOWA LEC USE OF IOWA NETWORK SERVICES**

- The Only Available Equal Access Solution for Great Lakes and Omnitel Is to Use Iowa Network Services
  - IXCs access INS at one point: Des Moines, Iowa
  - Consequently, access transport to both Great Lakes and Omnitel exchanges exceeds 100 miles
  - This is a real cost for rural CLECs in Iowa, not a fabrication to increase access charges
  - Acceptable alternative is for IXCs to pay INS directly or build facilities to individual exchanges
    - Burden is on IXCs to adopt this method
    - Failure of IXCs to pay CLECs where they do not choose either alternative is unacceptable

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# NATURE OF RURAL CLEC BUSINESS

- Rural CLECs Costs are Unlike ILEC Costs, Especially Non-Rural ILECs with which they Compete
  - Different Network Architectures
    - One switch to serve larger area
    - Using a third-party transport provider to allow equal access
  - Vastly Different Economies of Scale
    - Traffic utilization likely to be much lower for rural CLECs
    - Great Lakes and Omnitel have utilization rates in 30-50% range
  - Rural CLECs Require Augments and Incur Other Incremental Costs as Traffic Increases
    - Trunk-port and line-port costs increase with increases in traffic
    - Both Great Lakes and Omnitel have had to augment their switches and make significant new capital investments as traffic grew

# **SELF-HELP CANNOT BE TOLERATED; INDUSTRY SOLUTIONS SHOULD BE ENCOURAGED**

- Rather than Pursue Market-Based Responses, IXC's Have Improperly Relied on Self-Help
  - Call Blocking
  - Not paying access bills although tariff-based
- IXC's have Several Solutions They Should Be Encouraged to Explore Before the FCC Considers Regulatory Action
  - Contracts with CLECs
  - Competitive responses to conference calling services
  - Adjusting interexchange rates to impose additional burdens on heaviest users
    - Inappropriate for IXC's to force CLECs to assess access charges to support IXC pricing models

## **RECORD IN DOCKET WC 07-135 DOES NOT SUPPORT REGULATORY ACTION**

- No Consensus in the Record on what Regulatory Actions Should be Taken
- The Variety of Proposed Triggers Underscore the Arbitrariness of any Solution
  - The triggers are also fraught with definitional pitfalls
  - Any trigger is subject to further “abuse”
- The Magnitude of the Alleged Problem Does not Merit the Imposition of a new Regulatory Regime

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## **CONCLUSION: A MARKET-BASED APPROACH**

- The Commission Should Decline to Adopt a New Layer of Access Charge Regulation for Rural CLECs
- Before Considering Taking Any Generic Action, the Commission Should Require IXC's to Explore Market-Based Responses to the Problems They Perceive
- The Commission Should Reiterate the Impropriety of Self-Help Responses Taken by IXC's
- The Commission Should Encourage IXC's to Continue to Use the Complaint Process